



IN THE  
SUPREME COURT OF THE UNITED STATES

October Term , 1976

No. 76 - 1854

EDWARD J. LARKIN and JULIA LARKIN ,  
Petitioners ,

v.  
DAVID A. FARRELL, Cayuga County Treas-  
urer, et al.,

Respondents,

and  
TOWN BOARD OF THE TOWN OF FLEMING ,  
Cayuga County, et al.,

New Party Respondents.

PETITION FOR A WRIT OF CERTIORARI TO THE  
SUPREME COURT OF THE STATE OF NEW YORK ,  
APPELLATE DIVISION, FOURTH JUDICIAL  
DEPARTMENT, and TO THE COURT OF APPEALS  
OF THE STATE OF NEW YORK.

PETITIONERS' REPLY TO NEW PARTY RESPOND-  
ENTS' BRIEF .

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Aug. 19, 1977

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PETITIONERS' REPLY TO NEW PARTY RESPON-  
DENTS' BRIEF.  
- - -

This case arises from the Town Board's  
lawless, tyrannical destruction, abridgment  
& violation of the full panoply of petiti-  
oners' citizens' accrued rights, freedoms,  
liberty, privileges & immunities in its  
arbitrary, capricious failure to comply

with the mandated petition, & the statutory procedures, restrictions, provisions, prohibitions & limitations in the specified form & prescribed manner to be made only by specified officials strictly under & within their limited authority & limited jurisdiction conferred by law as set forth in the N.Y. Town Law sections.

The Town Board agrees that it cannot assess properties without following the procedures described in 61 McKinney's New York State, Town Law, § 239 \*\*\*" (Resp. Br. in Opp. p.2 (1) of Larkin v. Town Board, No. 76-1853). That is just one of many statutory procedures violated & not complied with by the Town Board. The assessment notices have not been published as required by law. Not only have the increased expenses not been authorized as provided by law but also the consent of the citizens & the consent of the State Comptroller has not been given nor obtained for same; the obligation of the petition has not been performed according to its terms; & the \$36,000 is not authorized according to law.

All the above direct violations & non-compliances with the law & the Constitution are set forth in companion case, Larkin v. Town Board, No. 76-1853, pp. 1-18, as well

as in this case. R 32 (8), R 36 (14), (15), R 31 (5), (6) - R (38). 49A McKinney's N.Y. Real Property Tax Law, § 516 (1), p. 336.

The right & entire freedom from being unlawfully levied, assessed & taxed in direct violation & defiance of law by the government is not a mere favor from any State, Town Board, County, or man, but a right of consent & assent only to lawful levies, assessments, & taxes flowing from the rights of the July 4, 1776 Declaration of Independence & rooted in the commands of due process of law, equal protection of the laws, & freedoms of speech, peaceful assembly, & petition for a redress of grievances set forth in the U.S. Constitution Amendments 1, 5, 9, 14 §1, the N.Y. State Constitution Art. 1, §§1, 6, 11, & 42 USCA §1981. R 31 (5) - R 38.

Otherwise, the Town Board, Cayuga County, & the State would wholly defeat, violate, abridge & destroy the accrued panoply of rights, liberty, property, privileges & immunities of citizens, real property owners by making same contingent upon their uncontrolled will, favor & discretion, resulting in a tyrannical unconstitutional censorship, prior restraint, & official

discrimination upon the peaceful enjoyment of guaranteed, secured & protected accrued panoply of citizens' rights, freedoms, liberties & properties. The State would be started on the road to destruction of government.

As said in *Gardner v. Town of Cameron*, 155 App. Div. 750 (1913, Fourth Dept.) 759 affd 215 NY 682 : "The creation of an obligation against the town by way of contract, cannot be founded upon omission of action by the town officials, but must be the result of an affirmative determination to create the obligation in the form and manner provided by statute." R 34 (1), R 35, 36 (10, 14, 15, 17), R 38 (22), 36 (14), 37 (17).

There is still additional debt of at least and over \$34,000. *Larkin v. Town Board*, R 19 (9). 61 McKinney's N.Y. Town Law § 202 (1) p. 80.

Mot. for Leave to Appeal to Court of Appeals, *Larkin v. Farrell*, Mot. No. 1191, 41 NY2d 802, affidavit of Julia Larkin, p. 15 : " (n) - "Kathryn Schnook never paid a water tax in the 3rd Water District although her farm was in the district till this year ; O- Harold Orchard, \*\*\*, lot not assessed; p- Henry Roloson, \*\*\*,



lot not assessed. " Said Henry Roloson was & is the clerk of said Town of Fleming , & is one of the New Party Respondents herein. R 43 (1),(2),(3), & (4), R 32-38. Corfield v. Corwell, 6 Fed. Cas. 546, 551-52.

This is deliberate official arrogant lawlessness & tyrannical selective discriminatory abuse of power in not duly assessing said lots. 49A McKinney's N.Y. Real Property Tax Law § 306, p.61 : " Standard of Assessment. All real property in each assessing unit shall be assessed at the full value thereof." The 14th Amendment U.S. Constitution covers the unequal enforcement of valid laws.

If the consummation of the State's tyrannical,lawless violations,abuses of power,non-jurisdiction, & non-compliances with the law & the Constitution brings with it the protection of the law, what use or force could there be in such said statutory procedures,restrictions,provisions,prohibitions, & limitations,limited & defined as to Town Board's jurisdiction & powers, & so much a policy of New York State. This would then be a police-state where the Town Board & Cayuga County Officials would be the law.

6.

Not only are the powers to levy, assess & tax properties purely statutory & wholly dependent upon statutory authority specifically directed & outlined in the manner to be followed, but the several steps for the collection of a tax & assessment are also dependent upon such limited authority & compliance must be had with all condition-precedents to have a lawful assessment & tax. This was not done here. R 32-38; Pet. 15-23.

The assessments were void, without jurisdiction, and the taxes null & void. There was no valid levy & assessment by the Town Board that could give rise to a valid tax sale of citizens' real properties by Cayuga County. In re The Petition of George Douglas, 46 NY 42 (1871), 44, 45. *Elmhurst Fire Co. v. City of New York*, 213 N.Y. 87 (1914) 91.

The system of laws relating to towns requires that all lawful bills for moneys lawfully expended or materials furnished or services lawfully rendered to the Town shall be verified and presented to the board of town auditors and audited by them, which was not done here. R 38 (3); *Larkin v. Town Board*, Index No. 76-1853, Pet. 13-14, and then enforced by lawful



warrants of the board of supervisors against the taxpayers of the Town . Pet. 15-23. R 36 (14), 38 (22), 34 (1), 35. That was not done here.

Petitioners never admitted"that the Town Board has full authority to assess Water District real property to pay for the construction costs of a water system. Br. in Opp., p. 6. That is the lower App. Div. statement, Pet. 10, Pet. App. 31, based on the false assumption that only an amount up to the \$174,000 maximum prospective approved bond indebtedness had been expended. It was deceived by the Town Board & its attorneys.

Even it states that " \*\*\* a total prospective bond indebtedness of \$174,000 was approved by both the Board and the State Department of Audit and Control. \*\*\* " Larkin v. Town Board, No. 76-1853, Pet. App, 29,30,31-32, but the true certified records show the gross over-extending of the approved \$174,000 in violation of the N.Y. Town Law statutes. Pet. 7,8,11,13-14,1 - 6 of said Larkin v. Town Board; and herein Pet., No. 76-1854, p. 18-19.

Under 49A McKinney's N.Y. Real Property Tax Law § 702 (2), Br. in Opp., App. p.12, which is not ambiguous, the thirty days

period for commencing review proceedings of an assessment roll does not begin until notice thereof has been given as required by law; i.e., the date when real property assessment roll is published .

Another statute involved is 49A McKinney's N.Y. Real Property Tax Law § 516 ( 1 ) at p. 336 ; that the assessors on or before August first shall finally complete the assessment roll \*\*\*, shall forthwith cause a notice to be published once in the official newspaper of such \*\*\* town \* \* \* stating that the assessment roll has been finally completed and a certified copy thereof so filed for public inspection. In towns, the assessors shall also cause a copy of the published notice to be posted on the signboard maintained for the posting of legal notices at the entrance of the town clerk's office pursuant to subdivision six of section thirty of the town law. \*\*". The record here shows no said publication nor compliance with said law.

Indeed, the Town Board & its attorneys finally admitted that the Town Board did not " place the Water District charges on the assessment roll - - pursuant to Town Law , Section 239 (Petition, page 23, et

seq)." Larkin v. Town Board, No. 76-1853, Br. in Opp., p. 8. R 36 (15).

Finally admitted by them that : " The taxes which the petitioners herein dispute are levied \*\*\* pursuant to the provisions of Town Law Section 198 (3)." New Party Resp. Br. in Opp., p. 7-8. Pet. p. 8. As the lower App. Div. Court stated : " \*\*That section ( Town Law, § 198 ) applies to charges for water actually used, Pet. p. 10; Pet. App. p. 31.

Still they try to brazen out of their deliberate bull-doing violations, deceptive tactics, & cover-ups, R 40 (4), 42, 43 (2), (4), (6), (7), in violating & not complying with the law by not taking full responsibility for their unauthorized , without jurisdiction actions and conduct.

It is shameful & horrible enough for a town public official, the Town Clerk Henry Roloson, to swear falsely under oath , but it is monstrously shocking, fundamentally unfair & reprehensible for their attorneys in violation of their constitutional oath and as officers of the Court to promote justice and the full truth to do so. 2 McKinney's N.Y. State Constitution, Art. XIII , §1, p. 590. Mooney v.

v. Holohan , 294 US 103, 112 ; Napue v. Illinois, 360 US 264, 269; Nixon v. Administrator of General Services, 97 S Ct 2777 (1977) 2808.

On top of the lawlessness of the Town Board is that of the Respondents Farrell et al herein. They knew of the true financial facts as they had the annual certified records for the years 1965 thru 1976, but kept silent. Pet. 18-19.

They knew that the Cayuga County Board of Supervisors acted pursuant to Section 198 of the Town Law in levying unpaid water bills as shown by the volumes " PROCEEDINGS OF THE BOARD OF SUPERVISORS OF Cayuga County AT SPECIAL, REGULAR and Annual Sessions : 1968, at p. 156, RESOLUTION NO. 186 To levy unpaid water and sewer bills - several towns . \*\*\*

RESOLVED, that the following amounts in the respective districts representing unpaid water and sewer bills in the various Towns, be levied against property owners in their respective towns who are liable therefor for service charges and unpaid water and sewer bills as claimed by the Water Department of \*\*\* their respective Town , pursuant to Section 198 of the

## Town Law.

TOWN ***	AMOUNT \$ ***
Fleming ***	1,878.93 ***

This resolution was adopted 11-25-68. ";  
& : 1969, at p. 143 , RESOLUTION NO. 159

To levy unpaid water and sewer bills -  
several towns. \*\*\*

RESOLVED , ( same as in year 1968 vol.)

December 1, 1969

## TOWN

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\*\*\*

Fleming - Water - - - -	1,553.15
***	*** ;

& : 1970 , at p.183 , RESOLUTION NO. 186

To levy unpaid water and sewer bills -  
Several Towns \*\*\*

RESOLVED , ( same as in 1968 vol.)

## TOWN

\*\*\*

Fleming - Water - - - -	\$ 2,025.54
***	***

This resolution was adopted 12-21-70 ;

& : 1971 , at p. 179 , RESOLUTION NO. 241

To levy Unpaid Water, Sewer and Constr-  
uction Bills - Several Towns

RESOLVED, that the following amounts in  
the respective districts representing un-  
paid water, sewer and construction bills  
in the various Towns be levied against

property owners in their respective towns who are liable therefore for service charges and unpaid water, sewer and construction bills as claimed by ~~the~~ their respective Town, pursuant to Section 198 of the Town Law.

DELINQUENT WATER

***		\$ ***
Fleming	- - - - -	1,684.17
***		****

DELINQUENT SEWER

***		***
-----	--	-----

DELINQUENT CONSTRUCTION

***		****
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This resolution was adopted 12-13-71. ;  
 & : 1972, at p.188 , of PROCEEDINGS of the  
 COUNTY LEGISLATURE of Cayuga County at  
 Special, Regular and Special Sessions ,  
 RESOLUTION NO.236 Levy Unpaid Water  
 and Sewer Bills - Several Towns By Mr.  
 Burke, Chm. Finance Comm. RESOLVED,  
 ( same as in in year 1968 Volume ; see  
 p. 10 Reply herein).

DELINQUENT WATER

***		\$***
Fleming	- - - - -	1,669.98
* * *		* * *

DELINQUENT SEWER

* * *		* * *
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This resolution was adopted 12-11-72. "  
 Abovesaid Mr. Burke is Paul C. Burke,



one of the Respondents in this action.

R 4 , 8 (4), 16 (4), 31 (4), 45(1),40 (1).

And in 1973 volume, at p. 206, of said PROCEEDINGS of the COUNTY LEGISLATURE \*\*\*, RESOLUTION NO. 292. Levy Unpaid Water & Sewer Bills - Several Towns. By Mr. Burke, Chairman, Finance Committee RESOLVED , (same as in year 1968 volume; see p. 10 Reply herein.)

DELINQUENT WATER

***	\$* * *
Fleming - - - -	4,149.28

DELINQUENT SEWER

\* \* \* \$ \* \* \*

\* \* \*

Resolution was adopted 11-26-73. "

Said Burke is abovesaid Paul C. Burke.

And in 1974 volume, at p.235, of said PROCEEDINGS of the COUNTY LEGISLATURE \*\*\*,

RESOLUTION No. 340 Levy Unpaid Water & Sewer Bills - Several Towns . By Mr. Con-  
iguglia, Chairman, Finance Committee

RESOLVED, ( same as in year 1968 volume; see p. 10 Reply herein.)

Delinquent Water

***	\$* * *
Fleming - - - - -	3,046.71

\* \* \*

Delinquent Sewer

Fleming - - - - -	\$1,395.45
* * *	* * * *

Signed by Contiguglia,\*\*Fus ,Burke,\*\*\*.  
Resolution was adopted 12 / 6 / 74. "

Abovesaid Contiguglia & Burke are 3-  
of the said Respondents in this action.  
Said Fus is Thaddeus Fus. R 31 (4), 40(4).

And in 1975 volume,at p.227 of said  
PROCEEDINGS of the COUNTY LEGISLATURE \*\*

\* Resolution No. 277 Levy Unpaid  
Water & Sewer Bills - Several Towns  
By Mr. Paul Burke,Chairman of Finance Com-  
mittee RESOLVED, (same as in year 1968  
volume ; see p. 10 Reply herein.)

DELINQUENT WATER\$ \* \* \*

\*\*\*  
Fleming - - - - - 4,019.74  
\* \* \*

DELINQUENT SEWER

Fleming - - - - - \$2,397.87  
\* \* \*

Signed by: Burke, \*\*\*, Fus,\*\*\*.

Resolution was adopted 12 / 1 / 75. "

Abovesaid Burke & Fus are 2 of Responde-  
nts herein. R 31 (4), 40 (4).

The 1976 volume is at the printers in  
process of being printed.

The said Resolution No. 186,see p.10  
herein, was By Messrs. O'Hara,\*\*\*,Stock,  
& signed by them , as well as Resolution  
No. 159,see p.11 hereof, & Resolution No.

186, see p. 10 Reply, Resolution No.236, see p.12 Reply, was signed by Burke,\*\*\*, Fus, \*\*\*, Stock. Resolution No.292, see p. 13 Reply, was signed by Burke,\*\*\*, O'Hara, \*\*\*, Stock,\*\*\*.

Abovesaid Stock is LaVerne E. Stock ,one of the Respondents in this action. R 4, 31 (4), R 22 (4), R 40 (1) .

But each and all the above kept silent as to the said Resolutions, thereby gutting Petitioners' rights & preventing a true factual hearing, U.S. C.A. Const. Amends 1,p.5, VI,pp.5-6, V ,p.5 ,IX,p.6, XIV,p.7. 2 McKinney's N.Y. State Const. Art. 1,§1,p.191, §7,p.38 of 1976-77 Cum. Annual Pocket Part, § 11, p.720, in violation of due process of law, equal protection of the laws, & of basic fundamental fairness.

In addition to the Petitioners' protests to the Town Board et al, protest also was made to the Respondents Farrell et al , contrary to the lower Court's statement, Pet. App. 32, as that is shown in the 1969 volume of PROCEEDINGS of the BOARD OF SUPERVISORS of CAYUGA COUNTY at Special, Regular and Annual Sessions, at p.45 Tuesday, March 18, 1969 : \*\*\*\* "Mr. Hunt, Chair-

rman of the Committee on Tax Matters, reported on a meeting of the committee with Mrs. Julia Larkin of Fleming.

Mr. Hunt explained that Mrs. Larkin had several grievances that could not be resolved by the committee and that her course for future action would have to be through the courts. He said the county had followed the advice of the County Attorney. "

Said County Attorney was & is the same RAYMOND S. SANT ,Cayuga County Attorney, Attorney for Respondents herein. R 46.

Petitioners tendered to the Fleming Town Tax Collector & to the Cayuga County Treasurer their taxes for the Cayuga County Tax, Fire District Tax, and Town Tax but said Collector & Treasurer refused to accept the tender & the monies for said taxes, each & every time. R 31 (6), but refused to pay the void, without jurisdiction, unconstitutional water tax , although the water tax was separated for 4 other persons. R 32 (7). Mot. for Leave to Appeal to the Court of Appeals, Larkin v. Farrell, et al, affidavit of Julia Larkin p. 14., par. 2-. Mot. No. 1191 , 41 NY2d 802.

For the above foregoing discussed re-

asons, as well as those which have been urged in the petition, certiorari should be granted.

Respectfully submitted ,

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- - -

2 McKinney's N.Y. State Constitution,  
ARTICLE XIII , p. 590 . PUBLIC OFFICERS  
( Oath of Office; \*\*) Section 1. Members  
of the legislature, and all officers, executive and judicial, except such inferior officers as shall be by law exempted, shall, before they enter on the duties of their respective offices, take and subscribe the following oath or affirmation: " I do solemnly swear ( or affirm) that I will support the constitution of the United States, and the constitution of the State of New York, and that I will faithfully discharge the duties of the office of . . . . . according to the best of my ability;" \*\*\*.

- - -

49A McKinney's N.Y. Real Property Tax

Law, § 516 , p. 336.

Filing of completed assessment roll; notice thereof.

1. On or before the first day of August, the assessors shall finally complete the assessment roll and prepare and file a certified copy thereof in the office of the \* \* \* town clerk. The assessors shall forthwith cause a notice to be published once in the official newspaper of such \* \* \* town, \*\*\*, stating that the assessment roll has been finally completed and a certified copy thereof so filed for public inspection. In towns, the assessors shall also cause a copy of the published notice to be posted on the signboard maintained for the posting of legal notices at the entrance of the town clerk's office pursuant to subdivision six of section thirty of the town law. On or before the first day of September, the assessors shall deliver the original assessment roll, or a copy certified by the assessors as containing the same information to the clerk of the board of supervisors.

- - -

49A McKinney's N.Y. Real Property Tax Law § 306 , p.61. Standard of Assessment.

All real property in each assessing unit



shall be assessed at the full value thereof.

- - -

49A McKinney's N.Y. Real Property Tax Law , § 702, pp. 424,425. \*\*\*time within which proceeding to be brought.

\*\*\*\*

2. Such a proceeding shall be commenced within thirty days after the final completion and filing of the assessment roll containing such assessment. For the purposes of this section an assessment roll shall not be considered finally completed and filed until notice thereof has been given as required by law.

- - -

61 McKinney's N.Y. Town Law § 202 ,p.80.  
Expenses of improvement how raised.

1. The expense of any public improvement made under authority of this article shall include the amount of all contracts, the costs of all lands and interests therein necessarily acquired including the total payments of principal remaining on obligations assumed pursuant to paragraph (b) of subdivision twelve of section one hundred ninety-eight, the costs of erection of necessary buildings for operation

or administration of the improvement,  
printing, publishing, interest on loans,  
legal and engineering services and all  
other expenses incurred or occasioned by  
reason of the improvement or project.

\*\*\*

- - -